



Water Quality NewsFlash

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Pesticides Sprayed on Waterways – EPA issues final regulations: CA policy not finalized

- In 2001, a federal appeals court decision (*Headwaters, Inc. v. Talent Irrigation District*) determined that NPDES permits are needed whenever herbicides or other pesticides are applied directly to waterways that may contact “waters of the U.S.” Storm water system managers sometimes need to apply chemicals to waterways to control mosquitoes or to clear clogged drainage ditches. The SWRCB responded to the court decision with a statewide general permit which was subsequently replaced by two statewide NPDES permits: *Discharges of Aquatic Pesticides for Vector Control* (WQ Order 2004-0008-DWQ) and *Discharge of Aquatic Pesticides for Aquatic Weed Control* (WQ Order 2004-0009-DWQ). Both permits are currently in effect.

U.S.EPA has taken a different approach and has previously issued guidance concluding that application of a pesticide to U.S. waters, consistent with the *Federal Insecticide, Fungicide, and Rodenticide Act* (FIFRA), does not constitute a discharge of a pollutant under the Clean Water Act in specified circumstances and therefore does not require a permit. EPA has now issued final regulations stating that pesticide use in compliance with FIFRA does not require an NPDES permit in two specific circumstances:

- 1) the pesticide is applied directly to waters of the U.S. to control pests present in the water.
- 2) the pesticide is applied to control pests that are over, including near, waters of the U.S.

The State Board is currently formulating a response to the new EPA regulations. In comments sent in 2005 to EPA, the State said: “The Clean Water Act’s mandate to ‘restore and maintain the chemical, physical, and biological integrity of the nation’s waters’ is not qualified by the suffix: ‘unless the impaired integrity was caused by properly applied product.’” In addition, on Dec. 12, Baykeeper, along with five other groups, filed suit in the U.S. Court of Appeals, Ninth Circuit, to overturn the new regulations. Caltrans staff with questions should contact their District Division of Maintenance Landscape Specialist. Issues requiring further inquiry should be directed to the Headquarters Division of Maintenance Landscape Program Administrator. EPA regulation: <http://www.epa.gov/fedrgstr/EPA-PEST/2006/November/Day-27/p20002.htm>. Those applying pesticides to waterways should check the State website for updates: <http://www.swrcb.ca.gov/npdes/aquatic.html>

Los Angeles Storm Water Permit – Appeals Court reverses itself: environmental documentation not required

– NewsFlash 06-42 noted the long-running litigation by 32 LA area cities, the county, and others against the 2001 MS4 storm water permit issued by the Los Angeles Regional Board. In October, 2006, a California Appeals Court ruled against the challengers on most points but did require the Regional Board to set aside the 2001 permit and conduct a limited California Environmental Quality Act review. In November, the Appeals Court modified its opinion and determined that an environmental review is not needed. A requirement to assess environmental impacts of municipal storm water permits (as well as other NPDES permits) could have led to significant delays in issuing permits. Original opinion: <http://www.courtinfo.ca.gov/opinions/documents/B184034.PDF> Order modifying original opinion: <http://www.courtinfo.ca.gov/opinions/documents/B184034M.PDF>

WQ NewsFlash is a weekly update of storm water and related news for the Department. *Verify information before taking action on these bulletins.* Contact Betty Sanchez, Betty_Sanchez@dot.ca.gov (916) 653-2115, or Fred Krieger, (510) 843-7889, fkrieger@msn.com with questions or to be added or deleted from e-mail list. Posted online at: <http://www.dot.ca.gov/hq/env/stormwater/publicat/newsflash/index.htm>